

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Charles Anthony Asmer,)	Case No. 4:21-cv-2817-RMG
)	
Plaintiff,)	
)	ORDER
v.)	
)	
Ms. Walton-Battle, H. Lopez, and)	
Walter Vereen,)	
)	
Defendants.)	
)	

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 67) recommending the dismissal of this action with prejudice. The Magistrate Judge recommends that the claim against Defendant Vereen for allegedly threatening Plaintiff with placement in the Special Housing Unit for asking questions about his medical treatment be dismissed because of a failure to exhaust administrative remedies. (*Id.* at 20-21). The Magistrate Judge recommended the claim against Defendant Walton-Battle be dismissed because she has absolute immunity as a commissioned officer of the United States Public Health Service, and any suit for her official actions must be brought against the United States under the Federal Tort Claims Act. (*Id.* at 21). Finally, the Magistrate Judge recommended that summary judgment be granted regarding Plaintiff’s claim against Defendant Lopez because the evidence presented of alleged deliberate indifference to a serious medical need was insufficient to support a constitutional violation. (*Id.* at 22-24).

Plaintiff was given notice of his right to file objections to the R & R within 14 days of service and that failure to timely file specific written objections would waive the right to file an appeal of the judgment of the District Court based upon the R & R. (Dkt. No. 67-1). Plaintiff has filed no objections to the R & R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

After reviewing the full record in this matter, the Court finds the Magistrate Judge ably addressed the issues presented and correctly concluded that the claim against Defendant Vereen should be dismissed for failure to exhaust administrative remedies, the claim against Defendant Walton-Battle should be dismissed because she has absolute immunity, and the summary judgment should be granted regarding the claim against Defendant Lopez for deliberate indifference to a serious medical need of an inmate. Consequently, the Court adopts the R & R of the Magistrate Judge (Dkt. No. 67) as the order of the Court. This action is dismissed with prejudice.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Judge

February 22, 2023
Charleston, South Carolina